

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT
REHABILITATION SERVICES BRANCH

In the Matter of the Appeal of Paul Lee
Pertaining to the Provision of Vocational
Rehabilitation Services

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for a telephone prehearing conference before Administrative Law Judge Barbara L. Neilson on April 28, 2008, at 1:00 p.m. Julie A. Leppink, Assistant Attorney General, appeared on behalf of the Vocational Rehabilitation Branch of the Department of Employment and Economic Development ("the Department"). There was no appearance by or on behalf of the Applicant, Paul Lee. The OAH record closed on April 28, 2008.

STATEMENT OF ISSUES

The issues presented in this case are whether the Department's Rehabilitation Services Branch improperly denied the request of the Applicant, Paul Lee, for funding to pursue a teaching certificate on the grounds that he could not achieve an employment outcome because he is on probation for an assault in California until 2009, his criminal record bars him from teaching students under the age of 18 in Minnesota, and he will not be eligible to have his criminal record expunged until his probation ends in 2009.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice and Order for Pre-Hearing initiating this contested case proceeding was served on the Applicant, Paul Lee, via first class mail on February 13, 2008, at the same address he set forth on his letter appealing the denial of his application for vocational training.¹ The Notice and Order for Pre-Hearing set a prehearing conference to be held by telephone on March 25, 2008, at 1:30 p.m.²

2. The Applicant did not file a notice of appearance in this matter, and did not answer his telephone when the Administrative Law Judge attempted to initiate the conference call on March 25, 2008. The Applicant did not make any request prior to the March 25, 2008, prehearing conference for a continuance or any other relief. The Administrative Law Judge left a message on the Applicant's answering machine on March 25, 2008, asking him to call back so that the conference call could be rescheduled. The Applicant did not do so.

¹ Certificate of Service of Joy G. Friedman attached to Notice and Order for Pre-Hearing.

² Notice and Order for Pre-Hearing, p. 1.

3. By letter dated April 10, 2008, the Administrative Law Judge notified the parties that the prehearing conference would be rescheduled for April 28, 2008, at 1:00 p.m. by telephone conference call. The letter included the following language:

If you are not available at this time or date, you must request a continuance of the prehearing conference as soon as possible. **If Mr. Lee fails to be available by telephone for the prehearing conference without good cause and without making an appropriate request for a continuance in advance of the prehearing conference, he shall be deemed in default and his appeal of the Vocational Rehabilitation Services Unit's denial of funding for him to obtain a teaching certificate shall be dismissed.**³

4. The Applicant did not answer his telephone when the Administrative Law Judge attempted to initiate the conference call on April 28, 2008. The Applicant did not make any request prior to the April 28, 2008, prehearing conference for a continuance or any other relief. The Administrative Law Judge left a message on the Applicant's answering machine noting that he had not been available for the conference call and asking that the Applicant call back.

5. On May 5, 2008, the Applicant called the Administrative Law Judge and indicated that he had received her message but had been unable to call the prior week. He stated that he had decided to withdraw his appeal and was not interested in pursuing the case. The Administrative Law Judge advised the Applicant that, unless she received a letter from him by May 12, 2008, indicating that he wished to withdraw his appeal, a Report would be issued finding him to be in default and recommending that his appeal be dismissed.

6. As of the date of this Report, the Administrative Law Judge has not received any further communication from the Applicant.

7. Because the Applicant failed to appear at the prehearing conference in this matter, he is in default.

8. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice and Order for Pre-Hearing are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Department have authority under Minn. Stat. §§ 268A.03 and 14.50, 34 C.F.R. § 361.57, and the Minnesota state plan for vocational rehabilitation services to consider the Applicant's appeal from the administrative decision refusing to provide him with the funding he requested.

³ April 10, 2008, Letter from Administrative Law Judge to Paul Lee and Julie Leppink, p. 1 (emphasis in original).

2. The Notice and Order for Pre-Hearing issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Applicant, having made no appearance at the prehearing conference, and not requesting any continuance or relief, is in default. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice and Order for Pre-Hearing are hereby taken as true, and it is concluded that the Department appropriately denied funding to the Applicant.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Department's denial of funding to Paul Lee be affirmed and his appeal be dismissed.

Dated: May 14, 2008

s/Barbara L. Neilson

BARBARA L. NEILSON

Administrative Law Judge

Reported: Default.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Employment and Economic Development will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact the Department, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101, tel. no. 952-346-4332, to obtain further information about how to file exceptions or present argument. Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.